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IS THE UNITED NATIONS MACHINERY AN EFFECTIVE INSTRUMENT FOR PEACE?

Arthur Manase¹

It has sometimes been argued that aggression and conflicts are qualities inherent in human beings and as such conflicts will always be with men unto eternity. It is not the objectives of this paper to trace either the historic origin of conflicts or the political economy underlying these conflicts. The objective of this paper is to analyse the mechanisms by which modern conflicts are regulated. A critical analysis will be made of the United Nations organisation and its subsidiary organs in order to ascertain whether they are in fact capable and do indeed either prevent armed conflicts or contain conflicts which arise.

United Nations Organization

This Organization was established after the Second World War. Its main aim is to ensure the maintenance of peace. Its predecessor, the League of Nations did not succeed in this objective for a number of reasons including its failure to encompass most States in its membership. For example the United States was not a member of the League. The League of Nations also lacked an effective enforcement machinery. The United Nations organisation was formed amidst great hopes that these obstacles would be overcome.

Charter of the United Nations Membership

Given the difficulties faced by the League of Nations as a result of the non-membership of some States it would have been most useful if a way could have been found under the *United Nations Charter* of making membership compulsory. But it is difficult to envisage how this mechanism could have been devised because States, being sovereign, are entirely at liberty to undertake contractual obligations on a voluntary basis.

Article 4 of the *Charter* simply states that membership in the United Nations is open to "all peace loving states which accept the obligations contained in the *Charter* and in the judgement of the organisation are able and willing to carry out these obligations." Switzerland because of its neutrality opted out of this system. Hence a State can either decide to be a member or non-member or the member States may decide that a particular State is not worthy of being a member of the organisation. *Article 5* further states that a member of the United Nations against which preventive or enforcement action has been taken may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. *Article 6* adds to this by further stating that a member of the United Nations which has persistently violated the principles contained in the *Charter* may be expelled from the Organisation by the General Assembly upon the recommendation of the Security Council.

Given the fact that some countries can potentially at any given point in time be non-members of the United Nations, it becomes questionable whether the Organisation can exert any legal influence on the conduct of such States. It is certainly plausible to argue that some of the Organisation's aims and objectives, such as the prevention of war and the upholding of human rights, are so fundamental and intrinsic to human survival and basic morality that they can be defined as aspects of customary law applicable to member and non member states alike. However the enforcement of these principles by the Organisation may be deemed controversial if it impinges on the liberty of conduct of sovereign non-members.

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Organs of the United Nations

Article 7 of the *Charter* states that the principal organs of the United Nations are the General Assembly, the Security Council, the Economic and Social Council, a Trusteeship Council, an International Court of Justice and a Secretariat. This paper will focus primarily on the General Assembly, the Security Council and the International Court of Justice.

The General Assembly

In terms of *Article 9* the General Assembly "shall consist of all the members of the United Nations." Under *Article 11* the General Assembly may consider the general principles of cooperation in the maintenance of international peace and security and may make recommendations with regard to such principles to the members of the Security Council. *Article 12* states that while the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter the General Assembly shall not make any recommendations with regard to that dispute or situation unless the Security Council so requests. *Article 14* states that the General Assembly may recommend measures for the peaceful adjustment of any situation. *Article 18* further states that each member of the General Assembly shall have one vote and that important decisions of the General Assembly shall be made by a two thirds majority of the members present and voting.

Observations

The General Assembly, unlike the Security Council, encompasses all the United Nations members and is thus much more democratic in giving an equal platform to all shades of opinion. It is important, however, to note that the General Assembly can only discuss security related problems generally and make recommendations to both the parties involved and the Security Council. The resolutions of the General Assembly being merely recommendatory, cannot have a binding effect on the parties. It is the Security Council with its restricted membership and its vulnerability to the veto power which is the bull dog with biting teeth. Although the voting procedures in the General Assembly are much more democratic than in the Security Council this is not really a boon since the General Assembly lacks an effective enforcement machinery. The General Assembly is really only a place where politicians and diplomats can pontificate and bottle up their frustrations and then wine and dine. Apart from offering voluntary good offices to parties locked in a dispute, the General Assembly; can do nothing other than referring the case to the Security Council where real power lies. According to *Article 23* of the Charter the Security Council shall consist of fifteen members of the United Nations. The People's Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America shall be permanent members of the Security Council. The General Assembly elects ten other members of the United Nations to be non-permanent members of the Security Council. *Article 24* confers upon the Security Council primary responsibility for the maintenance of international peace and security. *Article 27 (3)*, the veto clause, states that decisions of the Security Council on all matters other than procedural matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members.

The Security Council

The overwhelming importance of the Security Council stems from the fact that primary responsibility for the maintenance of peace is reposed in its hands. Further, unlike with the General Assembly the Security Council was given enforcement powers as laid down in Chapters six and seven of the Charter. What is important to note, however, is that not every State is a member of the Security Council.

The permanent members of the Security Council have a veto on all the major decisions of the Security Council. After the Second World War the five permanent members, allies against Germany, quickly established their military dominance by acquiring nuclear potential and expanding their economies. Perhaps in order to appease them as victors in the Second World War

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it was decided to give them the powers to veto in the Security Council. There is always the danger that if there is lack of consensus in the United Nations on a certain issue with the Security Council coming up with a recommendation purporting to bind a dissenting major power then that aggrieved power can always resort to force and the threat of use of nuclear power in order to intimidate the rest of the world to see things its own way. It is thus clear that the decisive deterrent against the use of force is the possession of equal or greater military muscle by the foe rather than the fear of the United Nations security Council. Whether their actions are legal or illegal the permanent members can always use the veto power to avoid condemnation by the world body even if they have trampled upon the rights of the smaller nations which are ineffectively represented within the Security Council and are so militarily weak that their armed forces pose no threat and cannot deter the use of force against them.

Article 2(4) of the Charter of the United Nations states that "all members shall refrain from the threat or use of force against the territorial integrity or political independence of any State". Article 51 of the Charter limits situations where States can resort to the use of force to "individual or collective self-defence if an armed attack occurs against a member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security." The *Nicaragua case* held that for the right of self defence to exist there must be an armed attack and that in situations of collective self defence the victim state must actually ask for help. A few illustrations will show that it is primarily the five permanent members of the Security Council that have breached the law in this respect and they always use the veto provision as an escape route.

- In 1965 the Soviet Union used force to crush the reform programmes which had been instituted in Czechoslovakia. In what has come to be regarded as the "Brezhnev doctrine" the Soviets claimed the right of self defence on the basis that by reason of western perversion in Czechoslovakia there existed a threat not only against socialism in Czechoslovakia but to the survival of socialism everywhere and hence the Soviet Union had a right to use force to defend socialism. The same line of reasoning had been employed to justify the Soviet intervention during the 1959 Hungarian reformist uprisings and during the 1979 Afghanistan civil war. There is absolutely no doubt that the legal requirements of self defence were far from being satisfied in these cases but no fundamental action was ever taken against the Soviet Union because of its possession of the power of veto.
- In 1965 the United States landed troops in the Dominican Republic on the pretext that there was a need on its part to protect its nationals in that country. The same excuse has been used to justify the use of force in countries such as Granada and in Panama in 1990 when the United States even had the audacity to arrest a foreign Head of State and incarcerate him in a United States jail. Britain and France also militarily intervened in the 1956 Suez Crisis on the pretext that they wanted to protect their citizens abroad.

In both these situations there was no armed attack on the aggressor State and hence the requirements of self defence were clearly not satisfied. It is in situations such as these that one would have expected the United Nations Organisation to come up with drastic measures against the aggressor in order to deter future aggressive attacks. Unfortunately because the Organisation is subject to "power politics" nothing in essence is ever done whenever one of the so-called Superpowers transgresses against the law.

An interesting contrast can be made however with how the world body reacted to the Iraq occupation of oil rich Kuwait in 1990 which threatened the strategic supply of oil to the world. Quite apart from the issue of sanctions which will be discussed below, the "politics of power" in the Gulf has to be considered. There is a possibility that prompt military action could have been taken against Iraq had there been no factors to deter this. The military capability of Iraq then had

never been verified. All that was known was that the Iraq military were well seasoned having undergone almost a decade of war with Iran in the 1980s. Further Iraq was known to have potent chemical arms whilst its nuclear potential was unclear, particularly in view of its attempts to smuggle nuclear trigger devices out of America in 1990. It might be this uncertainty combined with the allied forces' unpreparedness which for some time acted as a deterrent to the use of force in the Gulf. Thus Iraq for some time black-mailed the world, using its perceived military muscle just as the superpowers have always done. Peace thus becomes the product of fear of the adversary rather than International Law and its enforcement machinery.

Enforcement measures

Article 39 of the *Charter* gives the Security Council power to determine whether there exists a threat to the peace. *Article 40* gives the Security Council power to impose provisional measures to avoid an aggravation of the situation. *Article 41* of the *Charter* gives the Security Council power to impose economic or non-military sanctions. Sanctions were called for against Rhodesia in 1966 and in 1968 all trade with Rhodesia was banned. The Rhodesian economy, however, was quickly diversified. Most of Rhodesia's neighbours declined to take part in the sanctions because of their economic dependence on the Rhodesian economy. There were a lot of evasions of the sanctions and there was no supervisory body to enforce them. Countries such as Japan did not comply with the sanctions. The United States also did not comply because it had a strategic interest in chrome. The Rhodesian crisis ultimately ended on the battlefield when the Rhodesian Front government was forced to negotiate for peace in 1979. Thus economic sanctions did not on their own bring peace.

Sanctions were imposed against South Africa in 1977 relating to the provision of military equipment. Sanctions have never been imposed against Israel. Decisions on whether or not to impose sanctions are vulnerable to the veto power and hence can be used in a discriminatory manner and in furtherance of power politics and not peace. The Western World has always been reluctant to impose mandatory economic sanctions against South Africa which has been regarded as a strategic ally of the west. Apartheid, however, has been defined by the United Nations as a crime against humanity and its total elimination would further the cause of peace.

In 1990 mandatory economic sanctions were imposed against the Republic of Iraq after its invasion of the oil rich Kuwait Emirate. The rapport between the two superpowers and the strategic importance of oil no doubt led to there being an accord on the imposition of the sanctions. Whether or not Iraq would have been dislodged from Kuwait because of the effectiveness of the sanctions had they been given more time can never now be known. What is, however, patently clear from the other instances when mandatory economic sanctions were imposed is that they never proved effective in compelling the transgressing state to toe the line.

According to *Article 42* "should the Security Council consider that measures provided for in *Article 41* would be inadequate or have proved inadequate it may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security." It can be observed that this is the most effective enforcement machinery which the United Nations Charter provides for. For the Security Council to utilise this provision, however, there has to be unanimity amongst the superpowers. Hitherto such unanimity had been wanting because of the vast differences in the ideological and strategic interests of the Soviets and the Americans. Thus the Security Council had up to November 1990, not utilised this provision. The Soviet Union had always maintained that agreements have to be reached under *Article 43* of the *Charter* before the Security Council can use *Article 42*. According to *Article 43* "All members of the United Nations in order to contribute to the maintenance of international peace and security undertake to make available to the Security Council on its call and in accordance with a special agreement or agreements, armed forces, assistance and facilities including rights of passage for the purpose of maintaining peace and security". Apparently there had never been any consensus on these agreements. There does not seem to be any legal impediment to prevent States from making troops

available on a voluntary basis however. The lack of use of *Article 42* had thus greatly promoted the use of force outside the parameters of the United Nations Charter. States acting on a noble humanitarian basis have thus tended to use force and hide behind self-defence pretensions and yet such expeditions could have been carried out by a United Nations force under *Article 42*. A typical example of this is the Tanzanian invasion of Uganda in 1979 to topple the heinous Idi Amin regime.

With the advent of the Gorbachev revolution of Glasnost and Perestroika in the Soviet Union and the liberation of the rest of Eastern Europe, the areas of difference both in terms of strategic interests and in terms of ideology between the West and Eastern Europe have diminished to such an extent that they have ceased to have much significance. This just might promote consensus and lead to a greater reliance by the Security Council on *Article 42*. Indeed *United Nations Security Council resolution 678 of November 1990* authorised the use of all means necessary to drive Iraq out of Kuwait if it did not voluntarily pull out by 15 January 1991. With Iraq being in default, States voluntarily contributed troops and engaged the Iraq military.

This consensus amongst the superpowers on its own, however, is not a guarantee of peace. As long as some Security Council members possess the power of veto, *Article 42* will continue to be used in a discriminatory manner just as *Article 41* has been used in this way in the past. Third World interests will continue to be ignored in so far as they are of little strategic interest to the superpowers. If one of the superpowers degenerates into a dependent of the other superpower then *Article 42* would only serve the sectional interests of the dominant power. This Article can easily be used to crush other forms of societal development in the Third World. But it must also be noted that consensus to act under *Article 42* might yet prove difficult since Red China, a Permanent Security Council member, still adopts a strict ideological interpretation of Communism thus making its ideological interests incompatible with western values. The superpowers in any case can always turn a blind eye to a breach of International Law by a non-superpower if their strategic interests are not threatened. This happened for instance with Indonesia's breach of the Charter when it got involved in East Timor in 1975.

The International Court of Justice

Chapter 6 of the United Nations Charter deals with the Pacific settlement of disputes. *Article 36(3)* states that "the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court". *Article 92 of the United Nations Charter* provides for all members to be parties to the statute of the International Court of Justice. There is also provision for non members to become party to the Court's Statute on conditions to be determined by the General Assembly upon the recommendation of the Security Council. It is thus taken for granted that some States may very well not be parties to the Statute of the Court. This of course detrimentally affects the court's ability to acquire jurisdiction and consequently its ability to render effective judgements if the respondent State is a non-member. Without an effective judgement a dispute will not be resolved and hence there is no guarantee that a violent confrontation will not ensue.

Article 36 called the 'optional clause' has also proved to be a handicap. States may accept the compulsory jurisdiction of the Court but exclude some issues from this acceptance of jurisdiction by subjectively determining that these issues are within the State's own domestic jurisdiction. The 1946 United States Declaration which purported to exclude from the Court's jurisdiction cases which fell within the domestic jurisdiction of the United States as determined by the United States is a typical example of this. The legality of such declarations is extremely dubious. The important thing to note, however, is that if a State has already declared that an issue does not fall within the jurisdiction of the court that State would most likely refuse to participate in the hearing or follow the Court's findings.

Whether or not the International Court of Justice can be an effective instrument for peace ultimately depends on whether its rulings are respected. If it is a toothless bulldog then most States would rather seek extra-legal remedies even though the initial dispute would be a legal one. According to *Article 94(2)* "If any party to a case fails to perform the obligations incumbent upon it under a judgement rendered by the Court the other party may have recourse to the Security Council which may if it deems necessary make recommendations or decide upon measures to be taken to give effect to the judgement." As has already been noted the Security Council is susceptible to the whims of the Permanent members. Its vulnerability to the veto power renders any attempt to persuade it to take action against a defaulting State futile as long as the defaulting state is either a permanent member of the Security Council or a vital ally of one of the permanent members. The possibility is thus real that states involved in a legal dispute might end up resorting to war. The International Court of Justice lacks a machinery effective to enforce its rulings. At the end of the day most of its judgements are of mere academic interest, for example the Nicaraguan judgement which for the most part was just ignored by the United States.

The future

It has been suggested in some quarters that the removal of the veto power would improve the operational capacity of the Security Council. It is however a bit difficult to see in what way this would promote the cause of peace. It might well be that once a superpower, deprived of the power of veto, when aggrieved by a Security Council resolution would resort to the use of force or blackmail the rest of the world using its nuclear capacity. With the improvement in East/West relations in 1990 it is to be hoped that the two superpowers will continue to cooperate in the Security Council as they did when the Security Council imposed economic sanction and authorised the use of force against Iraq after its invasion of Kuwait. What has to be feared, however, is a situation where the superpowers work together to protect their mutual interests which mutual interests might be at variance with the interests of the Third World.

It has also been argued that the main reason African interests have never received priority is because Africa lacks a superpower of its own. It is argued that if one of the African countries developed a "black bomb" then that African country could justifiably claim a place as one of the Permanent members of the Security Council. Being in possession of the power of veto this African country would be expected to protect African interests and curb the avaricious conduct of the superpowers. The fallacy with this argument lies in the fact that there is nothing to prevent this African superpower from engaging in an expansionist policy and using its veto power to prevent the Security Council from adopting resolutions authorising action to curb its activities. Even if such country is not a permanent member of the Security Council there would be nothing to prevent it from occupying other States and using its nuclear capability as a deterrent to the United Nations using force against it. In any case there is no guarantee that the existence of a "black-bomb" would deter the superpowers from following an anti-Third World cause. The development of such a bomb might very well expedite the completion of the likes of "the Star Wars programme" rendering the bomb worthless as an object of intimidation. There is discrimination and inequality in the ownership of technical know how and Africa is likely to continue to lag behind in the manufacture of weapons of mass destruction and hence her priorities are likely to continue to be given second preference.

It can plausibly be argued that the cold war is over. It has thus been argued that with a thawing in relations between East and West the climate is conducive for disarmament. Thus a disarmament climate will evolve leading to the proscription of such weapons of mass destruction as nuclear and chemical weapons. Under such conditions the Permanent members of the Security Council can be deprived of the power of veto since there would be nothing unique about them any more. This it is argued would enable the Security Council to be more effective. Conventional forces would then be relied on to enforce the decisions of the Security Council. The weakness with this line of thinking however, lies in the fact that the elimination of nuclear/chemical weapons will still leave some countries with larger conventional armies which they can always use and it

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might be difficult for the United Nations to mobilize effective levels of troops to act as a deterrent. Further, the United Nations would still be susceptible to blackmail from the economically stronger countries since they naturally would continue to bear most of its budget. In any case it is doubtful that a monitoring machinery can be established which can scrupulously ensure that all the nuclear and chemical weapons are destroyed. It is also difficult to prevent Hitler-like dictators from manufacturing hideous weapons in times of conflict and using them to blackmail the rest of the world.

It is my considered submission that no institution can ever guarantee the maintenance of peace. There can never be an organisation which can effectively act as a world government. The United Nations serves as an outlet through which nations can vent their grievances and frustrations. It is an ideal platform which the poor and the deprived can use to explain to the rest of the world their plight and hence generate some sympathy. It is a cauldron into which all sorts of sentiments are mixed and the end product is a sort of universally accepted code of conduct amongst the community of civilized nations. Those who breach this code of conduct run the risk of being regarded as outlaws in the eyes of the world and this on its own can act as some deterrent. Whether or not a State uses force or uses its veto power in the Security Council to prevent action from being taken by the Security Council after it has breached the law would depend to a large extent on whether it would be able to weather adverse international opinion and the public outcry at home. International political moral standards are set in the United Nations. This perhaps best explains why South Africa was long regarded a pariah in the community of civilised nations despite the fact that the United Nations was prevented from enforcing any mandatory economic sanctions against the apartheid state because of the use of the veto power by Western States. Emphasis should also shift from inter-state conflicts to the more numerous civil wars if peace is to be given a chance.

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Charter of the United Nations Organisation



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